

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HECTOR GARCIA; and ROSEANN
MORRISON, individually and as co-
administrators of the Estate of Sahmya
Garcia, Deceased,

Plaintiffs,

v.

POLYMER80, INC.; and MARCUS BURNEY
PP# 816759,

Defendants.

Civil Action No. _____

State Case No.: 230802980
(Aug. Term 2023)

NOTICE OF REMOVAL

Defendant Polymer80, Inc. (“Polymer80”), by and through undersigned counsel, hereby files this Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 providing grounds of removing this matter to the United States District Court for the Eastern District of Pennsylvania, together with a copy of all process, pleadings, and orders served upon Polymer80 in the state court case. In support of removal, Polymer80 states the following:¹

¹ Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Polymer80’s rights to assert any defense, including, but not limited to those defenses available under Federal Rule of Civil Procedure 12.

1. On August 29, 2023, Plaintiffs filed a Praecipe to Issue Writ of Summons against Defendants Polymer80 and Marcus Burney PP# 816759 (“Burney”) in the Court of Common Pleas for Philadelphia County.

2. Plaintiffs have yet to file a complaint; however, Writ of Summons was issued, and the matter has been assigned for the August Term 2023, docket number 2308060407 (“State Court Matter”).

3. On September 11, 2023, Polymer80 received a copy of the Writ of Summons for the State Court Matter. A true and correct copy of Plaintiffs’ affidavit of service, filed in the Court of Common Pleas, is attached as Exhibit B.

4. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings, and orders served upon Polymer80 are attached as Exhibit A. No other documents have been served on Polymer80.

5. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. §§ 121(1) and 1441(a).

6. This case is removable to federal court because it involves a controversy between citizens of different states and because, upon information and belief,² the amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §§ 1332, 1441, 1446.

7. Plaintiffs Hector Garcia and Roseann Morrison are citizens of New Jersey.
Ex. A.

² See *infra*, at ¶ 10.

8. Polymer80 is incorporated in Nevada, with a principal place of business in Nevada, making it a citizen of Nevada for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c).

9. Defendant Marcus Burney is a citizen of Pennsylvania. Ex. A.

10. Papers served with the Writ of Summons show that the amount in controversy is *at least* \$50,000. Ex. A. Due to the possibility, however small, that the Writ of Summons may constitute “initial pleadings” for purposes of calculating a defendant’s time for removal,³ Polymer80 felt it necessary to remove without complete knowledge of the amount in controversy.

11. This Notice is filed with this Court within thirty (30) days of Defendant Polymer80’s receipt through service or otherwise of a copy of the Writ of Summons, arguably being the pleading which first attempted to set forth a claim for relief against Defendant Polymer80 upon such action or proceeding is based, as provided by 28 U.S.C. § 1446(b).

12. In any event, pursuant to 28 U.S.C. § 1446(c)(2)(A)(ii), Polymer80 asserts that the amount in controversy exceeds \$75,000.

13. Defendant Marcus Burney has given his written consent to the removal of the State Court Matter to this Court for purposes of 28 U.S.C. § 1446(b)(2), which is attached as Exhibit C.

³ *See, e.g., Foster v. Mut. Fire, Marine, & Inland Ins. Co.*, 986 F.2d 48 (3d Cir. 1993); *but see Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 222–23 (3d Cir. 2005).

14. Defendant Burney has consented to the removal within thirty (30) days of September 11, 2023, the date on which Polymer80 received Plaintiffs' Writ of Summons. *See* 28 U.S.C. § 1446(b)(2)(C) ("If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.")

PLEASE TAKE FURTHER NOTICE that Defendant Polymer80, upon filing this Notice of Removal in the office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, has also forwarded a copy of this Notice to the Court of Common Pleas for the County of Philadelphia for filing with that court and to effect removal of this action to the United States District Court pursuant to 28 U.S.C. § 1446(d).

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WHEREFORE Defendant Polymer80, Inc., respectfully removes this action from the Court of Common Pleas of Philadelphia County, Pennsylvania, Civil Division, this this Court where it shall proceed as an action originally commenced herein.

Respectfully submitted,

GOLDSTEIN LAW PARTNERS, LLC

Dated: October 11, 2023

/s/ Shawn M. Rodgers

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